

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

**NEBRASKA DATA CENTERS, LLC, and
AMERICAN NEBRASKA LIMITED
PARTNERSHIP,**

Plaintiffs,

vs.

Leo Khayet and Timber Ventures, LLC,

Defendant.

8:17CV369

**MEMORANDUM
AND ORDER**

This matter is before the Court on the Motion to Consolidate Cases and to Proceed In Forma Pauperis on Appeal, ECF No. 264, filed by Defendant Leo Khayet.

A party to a district-court action who has not previously been permitted to proceed in forma pauperis in the action must file a motion in the district court with an accompanying financial affidavit if that party desires to proceed on appeal in forma pauperis. Fed. R. App. P. 24(a)(1) & (3). Khayet was not previously permitted to proceed in forma pauperis in this action and he did not attach the requisite financial affidavit. Instead, he relies on the financial affidavit and permission to proceed in forma pauperis in another action, Case No. 8:18cv330. ECF Nos. 3 & 8 in Case No. 8:18cv330. Such reliance is not consistent with the text of Fed. R. App. P. 24(a). However, because this case and Case No. 8:18cv330 are related, and because the Court entered judgment in both contemporaneously, the Court will grant Khayet's request to proceed on appeal in forma pauperis based on the permission previously granted in Case No. 8:18cv330. See ECF No. 8 in Case No. 8:18cv330 (granting leave to proceed in forma pauperis).

The Court will not consolidate this case with Case No. 8:18cv330 for purposes of appeal because the Court may not have the authority to consolidate the cases for appeal. *Hunter v. Underwood*, 362 F.3d 468, 475 (8th Cir. 2004) (“The filing of a notice of appeal . . . confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.”). Accordingly,

IT IS ORDERED: The Motion to Consolidate Cases and to Proceed In Forma Pauperis on Appeal, ECF No. 264, is granted, in part, as follows:

- a. Defendant Leo Khayet’s request to proceed in forma pauperis on appeal is granted; and
- b. Defendant Leo Khayet’s request that the above-captioned action and Case No. 8:18cv330 be consolidated for purposes of appeal is denied.

Dated this 4th day of October, 2018.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge